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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

PARNELL COLVIN,	)	CASE NO. 2:20-cv-01765-APG-EJY
	)	
Plaintiff,	)	PLAINTIFF'S FIRST MOTION IN LIMINE
	)	TO EXCLUDE EVIDENCE OF PAST
vs.	)	LAWSUITS, LEGAL FILINGS AND/OR
	)	PROCEEDINGS OF PLAINTIFF
	)	UNRELATED TO THIS LAWSUIT;
M.J. DEAN CONSTRUCTION, INC.,	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT THEREOF
Defendant.	)	
	)	Trial: March 27, 2023
	)	Time: 9:00 a.m.
	)	Judge: Honorable Andrew Gordon

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff PARNELL COLVIN ("Colvin" or "Plaintiff") hereby moves this Court for an order excluding any physical evidence, witness testimony and attorney comments relating to past lawsuits, legal filings and/or proceedings Plaintiff was involved in unrelated to this lawsuit.

This motion is made under the provisions of Federal Rules of Evidence 402, and 403 and is based upon the supporting Memorandum of Points and Authorities, the pleadings and papers on file in this action, and upon such of the argument and evidence as may be presented prior to or at

1 the hearing on this matter.

2  
3 DATED: 2/24/2023

LAW OFFICES OF MICHAEL P. BALABAN

4  
5 BY: /s/ Michael P. Balaban

6 Michael P. Balaban, Esq.  
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10  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **PRELINARY STATEMENT**

14 This is a race-based employment discrimination action. Plaintiff Colvin is black. His legal  
15 claims of (1) retaliation, (2) discrimination regarding overtime opportunities, (3) harassment and  
16 (4) negligent training and supervision will be heard at trial. He seeks lost wages and  
17 compensatory damages for pain and suffering, including humiliation, embarrassment and  
18 emotional distress relative to the above legal claims. He also seeks attorney's fees and costs.

19 Defendant M.J. Dean Construction, Inc. ("Defendant" or "M.J. Dean Construction") seeks  
20 to introduce physical evidence, witness testimony and attorney comments relating to past lawsuits,  
21 legal filings and/or proceedings Plaintiff was involved in unrelated to this lawsuit.

22 By this motion, Colvin seeks an order precluding the introduction of any evidence, or  
23 mention of evidence, relating to the past lawsuits, legal filings and/or proceedings Plaintiff was  
24 involved in unrelated to this lawsuit.

25 This motion is based upon the grounds that the evidence is irrelevant, unfairly prejudicial  
26 and clearly inadmissible.

27 ///

28 ///

1 **II.**

2 **THIS COURT MAY EXCLUDE EVIDENCE IN ADVANCE OF**  
 3 **TRIAL BY WAY OF AN IN LIMINE MOTION**

4 The Court has authority to grant a motion in limine, in advance of trial, which excludes  
 5 inadmissible evidence, as well as any and all reference by the parties, attorneys and witnesses to  
 6 the inadmissible evidence. *Luce v. U.S.*, 469 U.S. 38, 41 (1984), 16 Fed. R. Evid. Serv. 833  
 7 (1984); *U.S. v. Lachman*, 48 F.3d 586, 590-94, 41 Fed. R. Evid. Serv. 339 (1<sup>st</sup> Cir. 1995).

8 In addition, Federal Rules of Evidence 103(c) and 104(c) allow the court to hear and  
 9 determine the question of the admissibility of evidence outside the presence or hearing of the jury.  
 10 *Williams v. Board of Regents of University System of Georgia*, 629 F.2d 993, 999-1001 (5<sup>th</sup> Cir.  
 11 1980).

12 **III.**

13 **EVIDENCE OF PAST LAWSUITS, LEGAL FILINGS AND/OR PROCEEDINGS**  
 14 **OF PLAINTIFF UNRELATED TO THIS LAWSUIT IS IRRELEVANT AND**  
 15 **SHOULD THEREFORE BE EXCLUDED FROM INTRODUCTION AT TRIAL**

16 Federal Rule of Evidence 401 provides that “evidence is relevant if (a) it has any tendency  
 17 to make a fact more or less probably than it would be without the evidence; and (b) the fact is of  
 18 consequence in determining the action.” *Huddleston v. U.S.*, 485 U.S. 681, 682-92, 25 Fed. R.  
 19 Evid. Serv. 1 (1988); *U.S. v. Brandon*, 17 F.3d 409, 443-46 (1<sup>st</sup> Cir. 1994) (rejected on other  
 20 grounds by, *U.S. v. Stockheimer*, 157 F.3d 1082 (7<sup>th</sup> Cir. 1998)). Evidence must be excluded  
 21 where it is not relevant to matters at issue. *Arlio v. Lively*, 474 F.3d 46 (2nd Cir. 2007) (evidence  
 22 regarding a prior arbitration was irrelevant and should have been excluded); *U.S. v. Edwards*, 631  
 23 F.2d 1049, 1051 (2d Cir. 1980) (trial judge had discretion to exclude two witnesses that were  
 24 offered by the defendant as irrelevant and collateral.) In fact, Federal Rule of Evidence 402 states  
 25 in pertinent part, “Irrelevant evidence is not admissible.”  
 26

27 This case is about Plaintiff and his employment with Defendant and before the jury is  
 28

whether Colvin was retaliated against for reporting racial harassment, suffered discrimination because of his race regarding overtime opportunities, was harassed because of his race and whether M.J. Dean Construction is liable for negligent training and supervision.

This being the case, the fact that Colvin had past lawsuits, legal filings and/or proceedings unrelated to this lawsuit is wholly irrelevant to the facts and issues to be decided at trial and therefore should be excluded from being introduced or in any mentioned at trial.

#### IV.

#### **EVIDENCE OF PAST LAWSUITS, LEGAL FILINGS AND/OR PROCEEDINGS OF PLAINTIFF UNRELATED TO THIS LAWSUIT SHOULD FURTHER BE EXCLUDED PURSUANT TO FEDERAL RULE OF EVIDENCE 403**

Under Federal law, evidence should be excluded when the prejudicial impact of the evidence outweighs the probative value of it. *Old Chief v. U.S.*, 519 U.S. 172, 180-92, 45 Fed. R. Evid. Serv. 835 (1997); *U.S. v. Aguilar-Aranceta*, 58 F.3d 796, 800-02, 42 Fed. R. Evid. Serv. 843 (1<sup>st</sup> Cir. 1995); *Coleman v. Home Depot, Inc.*, 306 F.3d 1333, 1343, 59 Fed. R. Evid. Serv. 431 (3<sup>rd</sup> Cir. 2002).

In fact, Federal Rule of Evidence 403 specifically states, “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusion of the issues, misleading the jury, undue delay, wasting time, or needless presenting cumulative evidence.”

As set forth above this is an employment case and involves issues of whether Plaintiff was retaliated against, suffered discrimination regarding overtime opportunities, was harassed and whether Defendant is liable for negligent training and supervision. It has absolutely nothing to do with Colvin’s past lawsuits, legal filings and/or proceedings unrelated to this lawsuit.

Thus allowing the evidence in will unlikely result in unfair prejudice to Plaintiff without advancing even marginally probative evidence. For example the jury could conclude that because Colvin has past lawsuits, legal filings and/or proceedings unrelated to this lawsuit, that somehow

1 he is a litigious individual and hold that against him in deciding the merits of this case.

2 The jury could also conclude that if Colvin was unsuccessful in his past lawsuits, legal  
3 filings and/or proceedings unrelated to this lawsuit, that somehow the merits of this case are  
4 suspect without analyzing the specific facts and law before them with regards to each cause of  
5 action presented by this case.

6 This being the case, admitting the evidence will likely lead to juror confusion of the issues  
7 and result in unfair prejudice to Plaintiff. As a result of the foregoing, the evidence of Colvin's  
8 past lawsuits, legal filings and/or proceedings unrelated to this lawsuit the violation should be  
9 excluded.

10 **V.**

11 **CONCLUSION**

12 For all the reasons stated above, Plaintiff requests that this Court exclude any reference at  
13 trial, including physical evidence, witness testimony and attorney comments, relating to Plaintiff's  
14 legal filings and/or proceedings unrelated to this lawsuit.

15 DATED: 2/24/2023

LAW OFFICES OF MICHAEL P. BALABAN

16 BY: /s/ Michael P. Balaban

17 Michael P. Balaban, Esq.

18 LAW OFFICES OF MICHAEL P. BALABAN

19 10726 Del Rudini Street

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**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to FRCP Rule 5(b)(3) and LR IC 4-1(a), a true and correct copy of the foregoing document was electronically served via the Court's CM/ECF electronic filing system to the following persons on February 24, 2023:

Martin A. Little, Esq.  
Robert L. Rosenthal, Esq.  
HOWARD & HOWARD ATTORNEYS PLLC  
*Attorneys for Defendant*

/s/ Michael P. Balaban  
Michael P. Balaban